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Telephone Number:

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PLR-135834-12

Date:

December 19, 2012

Legend

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

Sub 15 =

Sub 16 =

Sub 17 =

Sub 18 =

Sub 19 =

Sub 20 =

Sub 21 =

Sub 22 =

Sub 23 =

Sub 24 =

Sub 25 =

Sub 26 =

Sub 27 =

Sub 28 =

Sub 29 =

Sub 30 =

Sub 31 =

DRE 1 =

DRE 2 =

DRE 3 =

DRE 4 =

DRE 5 =

DRE 6 =

DRE 7 =

DRE 8 =

DRE 9 =

DRE 10 =

DRE 11 =

DRE 12 =

DRE 13 =

DRE 14 =

DRE 15 =

DRE 16 =

DRE 17 =

LLC =

Company A =

Company B =

Distributing Series =
A Stock

Distributing Series =
B Stock

Controlled Series =
A Stock

Controlled Series =
B Stock

Distributing =
Business

Controlled =
Business

Transition Services =

Transition Period =

Asset A =

Country A =

a =

b =

c =

d =

e =

Date 1 =

Dear :

This letter responds to your August 17, 2012 request for rulings on certain federal income tax consequences of a series of proposed transactions. The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this ruling letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by the appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding whether the Distribution (defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is being used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code (the "Code") and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a -percent or greater interest in the distributing or the controlled corporation (see § 355(e) and § 1.355-7).

Summary of Facts

Distributing is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. At the time of the Distribution, Distributing will have outstanding two series of publicly-traded common stock, the Distributing Series A Stock and the Distributing Series B Stock.

Distributing, through its separate affiliated group as defined in § 355(b)(3)(B) (the “Distributing SAG”), is engaged in various business activities, including the Distributing Business and the Controlled Business. Following the Distribution, the Distributing SAG will continue to conduct the Distributing Business, and Controlled, through its separate affiliated group as defined in § 355(b)(3)(B) (the “Controlled SAG”), will conduct the Controlled Business.

Distributing wholly owns Controlled, Sub 1, Sub 2, Sub 4, Sub 5, Sub 6, Sub 7, Sub 8, Sub 9, Sub 10, Sub 11, Sub 12, Sub 13, Sub 14, Sub 15, Sub 16, Sub 17, Sub 18, Sub 19, Sub 20, Sub 21, Sub 22, Sub 23, Sub 24, Sub 25, Sub 26, Sub 27, Sub 28, Sub 29, Sub 30, DRE 1, DRE 3, DRE 4, DRE 5, DRE 6, DRE 7, DRE 8, DRE 9, DRE 10, DRE 11, DRE 12, DRE 13, DRE 14, DRE 15, DRE 16, and DRE 17. Sub 21 wholly owns Sub 31 and Sub 32. Sub 31 and Sub 32 own a% and b%, respectively, of LLC. DRE 1 wholly owns DRE 2. DRE 2 owns Asset A.

Distributing, through DRE 13, DRE 14, and LLC, owns convertible preferred stock and common stock of Company A representing, in the aggregate, c% of the outstanding shares of common stock of Company A (assuming the full conversion of the Company A convertible preferred stock). Distributing and DRE 16 own d% and e%, respectively, of the common stock of Company B.

Each of DRE 1 through DRE 17 is an entity disregarded as separate from its owner under § 301.7701-3. All of the above described entities are domestic, except for DRE 8, which is organized under the laws of Country A. Together, Sub 1, Sub 2, Sub 4, Sub 5, Sub 6, Sub 7, Sub 8, Sub 9, Sub 10, Sub 11, Sub 12, Sub 13, Sub 14, Sub 15, Sub 16, Sub 17, Sub 18, Sub 19, Sub 20, Sub 21, Sub 22, Sub 23, Sub 24, Sub 25, Sub 26, Sub 27, Sub 28, Sub 29, Sub 30, DRE 3, DRE 4, DRE 5, DRE 6, DRE 7, DRE 8, DRE 9, DRE 10, DRE 11, DRE 12, DRE 13, DRE 14, DRE 15, DRE 16, DRE 17, and Company B, are referred to hereinafter as the “Contributed Entities.”

Financial information has been submitted which indicates that the Distributing Business and the Controlled Business each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Management of Distributing believes that the Distribution will help achieve the following corporate business purposes: (i) enhance the ability of Distributing to issue its equity more efficiently by eliminating the holding company discount with respect to the

Distributing stock, (ii) facilitate external acquisition growth strategies for Distributing, (iii) enhance the ability of Controlled to issue its equity by creating a more efficiently priced Controlled equity security, and (iv) enhance the possibility of a combination with Company A (collectively, the “Corporate Business Purposes”).

Proposed Transactions

To effect the Distribution, Distributing has proposed the following series of related transactions (collectively, the “Proposed Transactions”):

- (i) Distributing formed Controlled on Date 1. Controlled currently has outstanding a single class of common stock.
- (ii) Title to Asset A will be distributed by DRE 2 to DRE 1, and then by DRE 1 to Distributing.
- (iii) In a transaction that Distributing believes will be described under § 351, title to Asset A will be contributed by Distributing to Sub 2.
- (iv) DRE 1 will borrow under its revolving credit facility.
- (v) DRE 1 will distribute the cash borrowed pursuant to step (iv), as well as other cash on hand, to Distributing.
- (vi) All intercompany payables and receivables existing between Distributing on the one hand, and any of the Contributed Entities or their respective subsidiaries, in each case which are directly or indirectly wholly owned by Distributing, on the other hand, will be netted, and Distributing will cause (i) the full amount of any net intercompany receivables due to Distributing, on the one hand, from any of such Contributed Entities or their respective subsidiaries, on the other hand, to be contributed to the capital of such Contributed Entity (or, in the case of a subsidiary of a Contributed Entity, to the applicable Contributed Entity that is the direct or indirect parent of such subsidiary), and (ii) the full amount of any net intercompany receivables due to any of such Contributed Entities or their respective subsidiaries, on the one hand, from Distributing, on the other hand, either to be paid by Distributing or to be distributed by such Contributed Entity to Distributing (or, in the case of a subsidiary of a Contributed Entity, to its parent, and from that entity to its parent, until such net intercompany receivable is distributed to Distributing), after which it will immediately be extinguished.
- (vii) Distributing will contribute its entire interest in the Contributed Entities, cash, and other assets (collectively, the “Contributed Assets”) to Controlled in exchange for (i) the assumption by Controlled of certain liabilities and (ii) stock constructively

issued by Controlled (collectively, the “Contribution”).

- (viii) In a transaction that Distributing believes will be described under § 368(a)(1)(F), Distributing will form Sub 3, and Sub 3 will merge with and into Distributing, with Distributing surviving the merger. In the merger, Distributing will change its name.
- (ix) In a transaction that Distributing believes will be described under § 368(a)(1)(E) and (F), Controlled will file an amended and restated certificate of incorporation pursuant to which (i) Controlled’s common stock will be recapitalized into Controlled Series A Stock and Controlled Series B Stock, and Controlled will issue to Distributing a sufficient number of shares of each such series necessary to effect the Distribution (as described below) and (ii) Controlled will change its name.
- (x) Distributing will distribute on a pro rata basis (i) all of the Controlled Series A Stock to the holders of Distributing Series A Stock and (ii) all of the Controlled Series B Stock to the holders of Distributing Series B Stock (collectively, the “Distribution”).

In connection with the Distribution, Distributing and Controlled (and/or their subsidiaries, as applicable) will enter into agreements to provide for (i) Transition Services during the Transition Period (the “Services Agreement”), (ii) the allocation of tax liabilities and related tax matters, (iii) the lease or use of certain facilities, and (iv) airplane and other aviation equipment usage. Distributing and Controlled will also enter into a reorganization agreement to provide for the principal corporate transactions required to effect the Distribution and related restructuring transactions (together with the agreements in (i) through (iv) above, the “Transition Agreements”). The Transition Agreements will include certain indemnification provisions that may require Distributing and Controlled to make indemnity payments to each other following the Distribution (any such payments, the “Indemnity Payments”).

As a result of the Distribution, each of the compensatory stock options, stock appreciation rights, and restricted shares of stock (together, the “Equity Rights”) with respect to Distributing stock that are outstanding at the time of the Distribution will be adjusted or converted in a manner designed to reflect the intrinsic value of such Equity Rights at the time of the Distribution. It is expected that the terms of any unvested stock options and stock appreciation rights with respect to Distributing stock that are held by certain employees of DRE 1 or its subsidiaries will be adjusted and that all other Equity Rights with respect to Distributing stock that are outstanding at the time of the Distribution will be converted into Equity Rights on Distributing stock and Controlled stock (collectively, the “Equity Rights Adjustments”).

Representations

The following representations have been made regarding the Contribution and the Distribution:

- (a) Any indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing in the Distribution will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing, except as contemplated by the Equity Rights Adjustments.
- (c) Distributing and Controlled will treat all members of their respective “separate affiliated groups” (as defined in § 355(b)(3)(B)) as one corporation in determining whether the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.
- (d) The five years of financial information submitted on behalf of the Distributing Business conducted by the Distributing SAG is representative of the present business operations of the Distributing Business conducted by the Distributing SAG, and with regard to the Distributing Business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) The five years of financial information submitted on behalf of the Controlled Business conducted by the Distributing SAG is representative of the present business operations of the Controlled Business conducted by the Distributing SAG, and with regard to the Controlled Business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) Neither the Distributing Business nor control of an entity conducting this business was acquired by the Distributing SAG during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized under proposed § 1.355-3) in whole or in part.
- (g) Neither the Controlled Business nor control of an entity conducting this business was acquired by the Distributing SAG during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized under proposed § 1.355-3) in whole or in part.
- (h) Following the Distribution and except as contemplated by the Services Agreement, the Distributing SAG will continue the active conduct of the Distributing Business, independently and with its separate employees, and the Controlled SAG will conduct the active conduct of the Controlled Business, independently and with its separate employees.

- (i) The Distribution is being carried out for the Corporate Business Purposes. The Distribution is motivated, in whole or substantial part, by one or more of the Corporate Business Purposes.
- (j) The Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (k) (i) The total adjusted bases and the fair market value of the assets transferred to Controlled in the Contribution each equals or exceeds the sum of any liabilities assumed by Controlled plus any liabilities to which the transferred assets are subject; and (ii) any liabilities assumed in the Contribution, and any liabilities to which the transferred assets are subject, were incurred in the ordinary course of business and are associated with the assets being transferred.
- (l) No investment tax credit determined under § 46 has been, or will be, claimed with respect to any property that will be transferred by Distributing to Controlled in the Contribution.
- (m) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution, except for payables arising under the Transition Agreements or indebtedness otherwise arising in the ordinary course of business.
- (n) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Any excess loss account Distributing may have in the Controlled stock (or a member may have in the stock of another member that is required to be taken into account by § 1.1502-19) will be included in income immediately before the Distribution to the extent required by the regulations (§ 1.1502-19).
- (o) Except for Indemnity Payments, payments made in connection with all continuing transactions between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (p) No two parties to the Contribution and Distribution are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (q) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or

more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

- (r) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- (s) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (t) Immediately after the transaction (as defined in § 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in the stock of Distributing or Controlled, who did not hold such an interest immediately before the Distribution or (ii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (u) Distributing, Controlled and the shareholders of Distributing will pay their respective expenses, if any, incurred in connection with the Contribution and the Distribution.

Rulings

Based solely on the information submitted and representations made, we rule as follows regarding the Contribution and the Distribution:

- (1) The Contribution, followed by the Distribution, will be a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be “a party to a reorganization” within the meaning of § 368(b).
- (2) Distributing will not recognize any gain or loss on the Contribution (§§ 361(a) and 357(a)).

- (3) Controlled will not recognize any gain or loss on the Contribution (§ 1032(a)).
- (4) Controlled's basis in each asset received from Distributing in the Contribution will equal the basis of such asset in the hands of Distributing immediately before the Contribution (§ 362(b)).
- (5) Controlled's holding period in each asset received from Distributing in the Contribution will include the holding period during which Distributing held such asset (§ 1223(2)).
- (6) Distributing will not recognize any gain or loss on the Distribution (§ 361(c)(1)).
- (7) The holders of Distributing stock will not recognize any gain or loss (and will not otherwise include any amount in income) upon receipt of the Controlled stock in the Distribution (§ 355(a)(1)).
- (8) Each Distributing shareholder's aggregate basis in the stock of Distributing and Controlled following the Distribution will equal the aggregate basis of the Distributing stock that the shareholder held immediately before the Distribution, allocated between the stock of Distributing and Controlled in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(a)-(c)).
- (9) Each Distributing shareholder's holding period in the stock of Controlled received in the Distribution will include the holding period of the Distributing stock with respect to which the distribution is made, provided that the shareholder holds such Distributing stock as a capital asset on the date of the Distribution (§ 1223(1)).
- (10) Earnings and profits will be allocated between Distributing and Controlled in accordance with § 312(h) and §§ 1.312-10 and 1.1502-33.
- (11) Any Indemnity Payments made by Distributing to Controlled, or vice versa, that (i) have arisen or will arise for a taxable period ending on or before the Distribution or for a taxable period beginning on or before and ending after the Distribution and (ii) will not have become fixed and ascertainable until after the Distribution will be treated as occurring immediately before the Distribution (see *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).
- (12) Following the Distribution, Controlled will not be a successor of Distributing for purposes of § 1504(a)(3). Therefore, Controlled and its direct and indirect subsidiaries that are "includible corporations" (under § 1504(b)) and satisfy the ownership requirements of § 1504(a)(2) will be members of an affiliated group of

corporations entitled to file a consolidated U.S. federal income tax return with Controlled as the common parent.

Caveats

No opinion is expressed about the federal income tax treatment of the Proposed Transactions under other provisions of the Code and Regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) Whether the Distribution satisfies the business purpose requirement of § 1.355-2(b),
- (ii) Whether the Distribution is being used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) and § 1.355-2(d)),
- (iii) Whether the Distribution is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e)(2)(A)(ii) and § 1.355-7),
- (iv) The federal income tax consequences of the Equity Rights Adjustments, and
- (v) Except as otherwise necessary to the rulings herein, the federal income tax consequences of steps (ii) through (vi), (viii), and (ix).

Procedural Matters

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter.

In accordance with a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

A. Graham Magill

A. Graham Magill
Assistant Branch Chief, Branch 5
Office of Associate Chief Counsel
(Corporate)